

PRELIMINARY DRAFT: CLAIM 8 – RICHARD RUSCITTI

ATTORNEY WORK PRODUCT

Caveat: All information herein is provided upon information and belief.

Claims Against Richard Ruscitti

Claim 8 – Name: Richard Ruscitti (Kingdom Chevrolet, Inc.)

Defendant: Richard Ruscitti

Claim Type: Wrongful Termination; Failure of S Corporation to Pay Dividends; Oppression of Minority Shareholder; Defamation; Fraud; Falsifying Documents; Embezzlement.

Preliminary Range of Estimated Damages: \$12.7M+

Summary:

I. Ownership

1. Michael Helmstetter (Helmstetter) has a 33% ownership interest¹ in Kingdom Chevrolet, Inc. (Kingdom Chevrolet), an S-Corporation².
2. The majority shareholder, Richard Ruscitti (Ruscitti) does not dispute Helmstetter's ownership interest.
3. In 2014, Ruscitti fired Helmstetter from Kingdom Chevrolet and falsely accused him of committing fraud (which was, in fact, perpetrated by a third party) and, by so doing, defamed Helmstetter, directly harming his reputation in the auto dealership industry.

¹ HELMSKIN000014

² HELMSKIN000001

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II. Loss of Earnings:

1. Ruscitti's wrongful termination of Helmstetter's employment resulted in Helmstetter's loss of earnings estimated to be at least \$1.1M.

III. Loss of Dividend Distributions:

1. Kingdom Chevrolet's financial statements from January 1, 2011 through December 31, 2015 show dividends totaling approximately \$7.3M³.
2. Helmstetter received approximately \$1.04M⁴ of this total, with the remaining \$6.26M being paid to Ruscitti.
3. Helmstetter did not receive the rest of his appropriate pro rata share of the dividends.
4. The 2014 and 2015 tax returns of Kingdom Chevrolet do not reflect any dividends paid in either year, despite dividends being recorded in the financial statements for those years.
5. There is no readily ascertainable reason for the difference between the financial statements and the tax return.

³ HELMSKIN000033 to HELMSKIN000528

⁴ HELMSKIN000529 to HELMSKIN000530

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IV. Overstatement of Expenses – Excess Executive Compensation and Falsified Rent and Mortgage Payments:

1. Kingdom Chevrolet's financial statements recorded executive compensation as \$247K for the year ended December 31, 2015⁵.
2. The 2015 tax return of Kingdom Chevrolet showed \$56K⁶ as paid to Ruscitti, with no other executives recorded.
3. There is no readily ascertainable reason for the difference between the financial statements and the tax return.
4. Kingdom Chevrolet's financial statements from January 2015 through December 31, 2015 show rent paid of \$593K⁷, which is \$209K in excess of rent of \$384K⁸ payable per Kingdom Chevrolet's lease agreement with Gillespie Properties, LLC dated November 30, 2009.
5. It appears that Ruscitti caused Kingdom Chevrolet to take out at least three mortgage loans, none of which were authorized by Helmstetter, none of which were within Helmstetter's knowledge.
6. It is unknown what real estate was used as security for at least two mortgage loans as Kingdom Chevrolet did not reflect any real estate owned in its financial statements and the buildings and improvements were reflected at \$14K⁹ until the last mortgage loan was taken out in September 2015, when they increased by \$2M¹⁰.

⁵ HELMSKIN000523

⁶ HELMSKIN000531

⁷ HELMSKIN000523

⁸ HELMSKIN000563 to HELMSKIN000583

⁹ HELMSKIN000484

¹⁰ HELMSKIN000491

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7. The mortgage loans appear to have been taken out as follows: \$352K¹¹ in September 2013, \$680K¹² in October 2014, and a net \$1.8M¹³ in September 2015.
8. In total, \$1.8M was paid down by the dealership in mortgage loans from September 2013 through December 2015.
9. Interestingly, no mortgage interest is recorded by Kingdom Chevrolet from September 2013 through December 2015 on its financial statements¹⁴.
10. No mortgage loans and no mortgage interest are recorded on the dealership's tax returns for the same period.¹⁵

11. Indicia of Doctored Financial Statements:

12. Kingdom Chevrolet's financial statements presented to Helmstetter for the period January 2011 through May 2016 contain numerous indicia of having been doctored.

V. Preliminary Estimated Economic Damages: \$12.7M+

1. An estimated \$7M representing Helmstetter's 33% share of the Fair Market Value of Kingdom Chevrolet
2. An estimated \$1.1M in unpaid salary and bonuses due to Helmstetter by Kingdom Chevrolet

¹¹ HELMSKIN000303

¹² HELMSKIN000407

¹³ HELMSKIN000491

¹⁴ HELMSKIN000303 to HELMSKIN000528

¹⁵ HELMSKIN000001 to HELMSKIN000032 and HELMSKIN000531 to HELMSKIN000562

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3. An estimated \$3.1M in unpaid dividends due to Helmstetter by Kingdom Chevrolet from 2011 through 2015, with additional dividends to be determined for 2016 to date.
4. An estimated \$1.5M representing Helmstetter's 33% share of excess executive compensation drawn by Ruscitti and falsified rent and mortgage payments made by Ruscitti.
5. Helmstetter's share of 33% of Reinsurance Business with CNA, Alpha and any other reinsurance companies, to be determined and believed to be material.
6. Claim for Consequential Damages created by Ruscitti, to be determined and believed to be material.

VI. Supporting Documents:

1. **HELMSKIN000001-HELMSKIN000032** -2014 Income Tax Return for an S Corporation form 1120S for Kingdom Chevrolet.
2. **HELMSKIN000033-HELMSKIN000039** – Jan 2011 General Motors Dealer Operating Report for Kingdom Chevrolet and CV11 Financial Statement Exception Report.
3. **HELMSKIN000040-HELMSKIN000049** – Feb 2011 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
4. **HELMSKIN000050-HELMSKIN000057** – Mar 2011 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
5. **HELMSKIN000058-HELMSKIN000065** – Apr 2011 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.

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6. **HELMSKIN000066-HELMSKIN000073** – May 2011 General Motors Dealer
Operating Report and CV11 Financial Statement Exception Report.
7. **HELMSKIN000074-HELMSKIN000081** – Jun 2011 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
8. **HELMSKIN000082-HELMSKIN000089** – Jul 2011 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
9. **HELMSKIN000090-HELMSKIN000097** – Aug 2011 General Motors Dealer
Operating Report and CV11 Financial Statement Exception Report.
10. **HELMSKIN000098-HELMSKIN000105** – Sep 2011 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
11. **HELMSKIN000106-HELMSKIN000113** – Oct 2011 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
12. **HELMSKIN000114-HELMSKIN000122** – Nov 2011 General Motors Dealer
Operating Report and CV11 Financial Statement Exception Report.
13. **HELMSKIN000123-HELMSKIN000130** – Dec 2011 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
14. **HELMSKIN000131-HELMSKIN000138** – Jan 2012 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
15. **HELMSKIN000139-HELMSKIN000146** – Feb 2012 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.
16. **HELMSKIN000147-HELMSKIN000154** – Mar 2012 General Motors Dealer Operating
Report and CV11 Financial Statement Exception Report.

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17. **HELMSKIN000155-HELMSKIN000162** – Apr 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
18. **HELMSKIN000163-HELMSKIN000170** – May 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
19. **HELMSKIN000171-HELMSKIN000179** – Jun 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
20. **HELMSKIN000180-HELMSKIN000195** – Aug 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
21. **HELMSKIN000200-HELMSKIN000203** – Sep 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
22. **HELMSKIN000204-HELMSKIN000213** – Oct 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
23. **HELMSKIN000214-HELMSKIN000228** – Nov 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
24. **HELMSKIN000229-HELMSKIN000235** – Dec 2012 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
25. **HELMSKIN000236-HELMSKIN000242** – Jan 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
26. **HELMSKIN000243-HELMSKIN000249** – Feb 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
27. **HELMSKIN000250-HELMSKIN000258** – Mar 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.

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28. **HELMSKIN000259-HELMSKIN000266** – Apr 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
29. **HELMSKIN000267-HELMSKIN000274** – May 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
30. **HELMSKIN000275-HELMSKIN000281** – Jun 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
31. **HELMSKIN000282-HELMSKIN000289** – Jul 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
32. **HELMSKIN000290-HELMSKIN000302** – Aug 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
33. **HELMSKIN000303-HELMSKIN000309** – Sep 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
34. **HELMSKIN000310-HELMSKIN000318** – Oct 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
35. **HELMSKIN000319-HELMSKIN000326** – Nov 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
36. **HELMSKIN000327-HELMSKIN000337** – Dec 2013 General Motors Dealer Operating Report and CV11 Financial Statement Exception Report.
37. **HELMSKIN000338-HELMSKIN000346** – Jan 2014 General Motors Dealer Operating Report.
38. **HELMSKIN000347-HELMSKIN000353** – Feb 2014 General Motors Dealer Operating Report.

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39. **HELMSKIN000354-HELMSKIN000360** – Mar 2014 General Motors Dealer Operating Report.
40. **HELMSKIN000361-HELMSKIN000369** – Apr 2014 General Motors Dealer Operating Report.
41. **HELMSKIN000370-HELMSKIN000377** – May 2014 General Motors Dealer Operating Report.
42. **HELMSKIN000378-HELMSKIN000385** – Jun 2014 General Motors Dealer Operating Report.
43. **HELMSKIN000386-HELMSKIN000393** – Jul 2014 General Motors Dealer Operating Report.
44. **HELMSKIN000394-HELMSKIN000401** – Aug 2014 General Motors Dealer Operating Report.
45. **HELMSKIN000402-HELMSKIN000406** – Sep 2014 General Motors Dealer Operating Report.
46. **HELMSKIN000407-HELMSKIN000414** – Oct 2014 General Motors Dealer Operating Report.
47. **HELMSKIN000415-HELMSKIN000422** – Nov 2014 General Motors Dealer Operating Report.
48. **HELMSKIN000423-HELMSKIN000429** – Dec 2014 General Motors Dealer Operating Report.
49. **HELMSKIN000430-HELMSKIN000437** – Jan 2015 General Motors Dealer Operating Report.

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50. **HELMSKIN000438-HELMSKIN000444** – Feb 2015 General Motors Dealer Operating Report.

51. **HELMSKIN000445-HELMSKIN000452** – Mar 2015 General Motors Dealer Operating Report.

52. **HELMSKIN000453-HELMSKIN000460** – Apr 2015 General Motors Dealer Operating Report.

53. **HELMSKIN000461-HELMSKIN000468** – May 2015 General Motors Dealer Operating Report.

54. **HELMSKIN000469-HELMSKIN000476** – Jun 2015 General Motors Dealer Operating Report.

55. **HELMSKIN000477-HELMSKIN000483** – Jul 2015 General Motors Dealer Operating Report.

56. **HELMSKIN000484-HELMSKIN000490** – Aug 2015 General Motors Dealer Operating Report.

57. **HELMSKIN000491-HELMSKIN000499** – Sep 2015 General Motors Dealer Operating Report.

58. **HELMSKIN000500-HELMSKIN000507** – Oct 2015 General Motors Dealer Operating Report.

59. **HELMSKIN000508-HELMSKIN000521** – Nov 2015 General Motors Dealer Operating Report.

60. **HELMSKIN000522-HELMSKIN000528** – Dec 2015 General Motors Dealer Operating Report.

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61. **HELMSKIN000529-HELMSKIN000530** – June 27, 2019 email from Bryan King

regarding summary of distributions by Kingdom Chevrolet from 2010-2015.

62. **HELMSKIN000531-HELMSKIN000562** – 2015 U.S. Income Tax Return for Kingdom

Chevrolet.

63. **HELMSKIN000563-HELMSKIN000583** – November 30, 2009 Lease between

Gillespie Properties and Kingdom Chevrolet.